

EXHIBIT 33

AMY B. HIRSCH
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: SIPA LIQUIDATION

BERNARD L. MADOFF INVESTMENT No. 08-01789(BRL)
SECURITIES LLC,

(Substantively
Consolidated)

Debtor.

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IRVING H. PICARD, Trustee of the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff,

Adv. Pro. No.
vs. 09-01182(BRL)

J. EZRA MERKIN, GABRIEL
CAPITAL, L.P., ARIEL FUND LTD.,
ASCOT PARTNERS, L.P., GABRIEL
CAPITAL CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION OF AMY B. HIRSCH
New York, New York
June 16, 2015

Reported by:
KATHY S. KLEPFER, RMR, RPR, CRR, CLR
JOB NO. 94520

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2 Q. Do you have an opinion as to whether
3 that relates to the topic of due diligence
4 performed by Mr. Merkin on Madoff or Madoff
5 securities?

6 A. My opinion, again, is stated in the
7 report.

8 Q. Does Opinion I relate to the topic of
9 due diligence performed by Mr. Merkin on Madoff
10 or Madoff securities?

11 A. Opinion I speaks to bookkeeping and
12 recordkeeping and accounting and the use of fund
13 assets and investor subscriptions.

14 Q. Does that, in your mind, relate to due
15 diligence performed by Mr. Merkin?

16 A. Again, it relates to bookkeeping and
17 accounting functions and transfers of assets and
18 the appropriateness of those transfers of
19 assets.

20 Q. Are you able to answer my question as
21 to whether or not it relates to the topic of due
22 diligence performed by Mr. Merkin?

23 A. This opinion is specifically focused
24 on bookkeeping and accounting and the transfer
25 of assets. Due diligence is a very, very broad

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2 MS. HOANG: I'll put on the record
3 that that was produced to you guys pursuant
4 to a subpoena, Rule 45 subpoena, to David
5 Bamberger, and then we produced whatever he
6 gave us to you guys, to the defendants.

7 BY MR. STEINER:

8 Q. Yes or no: Have you discussed with
9 the trustee's counsel any of the opinions that
10 you offered in the Hammerman case?

11 MS. HOANG: Objection. Caution the
12 witness not to disclose any privileged
13 communication.

14 Q. You can answer yes or no. My question
15 was yes or no, which I assume the trustee's
16 counsel agrees you can answer.

17 MS. HOANG: Go ahead.

18 A. No.

19 Q. Am I right that, in that case, one of
20 the things that you were asked to look at was
21 the due diligence performed by Mr. Merkin?

22 MS. HOANG: I just want to caution the
23 witness, I don't know the scope of the
24 privilege that you have with Mr. Bamberger
25 and your -- and his client, the Fisch and

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2 Hammerman Foundation, so I just caution you
3 with that, but if you can answer Mr.
4 Steiner's question without disclosing the
5 communications.

6 THE WITNESS: Okay. Yes, I can answer
7 that, actually, and yes, it did involve due
8 diligence.

9 BY MR. STEINER:

10 Q. And am I correct that, in connection
11 with your work in that case, you did not observe
12 or form any opinion that Mr. Merkin or GCC knew
13 about the fraud that was perpetrated by Mr.
14 Madoff --

15 MS. HOANG: Objection.

16 Q. -- is that right?

17 MS. HOANG: I'm sorry. Objection.

18 A. I cannot discuss my opinions in that.

19 Q. Well, isn't it the case that when
20 asked to give an opinion about due diligence in
21 the Hammerman case, you -- you did not give an
22 opinion or your opinion was not that Mr. Merkin
23 was reckless or knew about or intentionally
24 disregarded any fraud or Ponzi scheme by Mr.
25 Madoff?

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2 contain an analysis of the firm and its
3 personnel, all of the products that it has under
4 management, it would contain a review of the
5 strategy in its totality and a review of the
6 underlying investments in the strategy to the
7 best of our -- of our knowledge.

8 It would contain an analysis of risk
9 management, portfolio construction, execution,
10 risk management, operational efficiencies and
11 insufficiencies.

12 It would contain a complete
13 performance analysis and peer analysis, if
14 appropriate. It would contain a variety of
15 different correlation analysis and market
16 analysis versus the performance.

17 Those are just some of the things that
18 a full report would contain.

19 Q. Would it -- are you familiar with the
20 term "reverse engineering"?

21 A. Yes, I'm familiar with it.

22 Q. And would -- when you perform due
23 diligence, do you do reverse engineering of a
24 strategy?

25 A. Not necessarily.

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2 Q. Why not?

3 A. We don't necessarily need to do
4 reverse engineering because you can find out --
5 there are different ways to get factors and
6 correlation analysis done to find out what
7 footprints are. So in rare cases do we do --
8 will we do, or have to do, reverse engineering.

9 Q. That's -- reverse engineering is
10 something that you do rarely?

11 MS. HOANG: Objection.

12 A. We -- we have not found a reason to,
13 to do it. So it's not something that is done on
14 a standard basis, no.

15 Q. As part of your standard due
16 diligence, do you try and do a quantitative
17 breakdown of the sources of a fund's return?

18 A. Yes.

19 Q. How do you do that?

20 A. Well, it's done either through a
21 correlation analysis, factor analysis. There
22 are a number of ways to achieve it. There's a
23 breakdown of beta and alpha analysis,
24 footprinting, et cetera.

25 Q. What's footprinting?

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2 reward in a investment.

3 Q. And how do you -- how do you use the
4 Sharpe ratio?

5 A. For what, specifically?

6 Q. Do you use the Sharpe ratio in your
7 work?

8 A. It's one of the tools we look at, yes.

9 Q. And why do you look at it?

10 A. We look at it because in many
11 strategies it can give you a sense of the -- the
12 type of risk and reward you're getting for your
13 investment, and the issue with the Sharpe ratio
14 is that it penalizes for upside volatility, so
15 we only use it as one of the tools. It wouldn't
16 be appropriate, for example, for managed futures
17 because it would -- it would hurt the manager.
18 But it's a great tool for using on most of the
19 equity strategies.

20 Q. And as a general matter, is there a
21 direction of Sharpe -- do you prefer a higher
22 Sharpe ratio or a lower Sharpe ratio?

23 A. You're looking for a higher Sharpe
24 ratio.

25 Q. And that's typically a good thing?

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2 A. It's not that it's a good thing, it's
3 just one of the tools in the toolbox of -- of
4 performance analysis. It shouldn't be looked at
5 standalone. We don't look at it standalone. We
6 look at it in conjunction with a lot of other
7 performance indicators.

8 Q. Are you aware of funds that have
9 Sharpe ratios in excess of 2 or 2 and a half?

10 A. I am aware that there have been funds,
11 yes, with Sharpe ratios in excess of those.

12 Q. Such as?

13 A. Renaissance. There are -- there were
14 a few equity managers that were in excess of 2.
15 I can't give you the --

16 Q. Renaissance, that's the Jim Simons'
17 fund?

18 A. Yes.

19 Q. And Elliott, are you familiar with
20 Elliott?

21 A. Elliott Partners? Yes.

22 Q. Elliott Capital Management?

23 A. Yes.

24 Q. And is their Sharpe ratio also
25 somewhere in excess of 2 or 2 and a half?

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2 A. Well, first, I verified it against the
3 documentation I had, but then, yes, she did have
4 it in her report, one of the examples. I think
5 example 4, perhaps.

6 MS. VIBBERT: I have no further
7 questions.

8 MS. HOANG: No questions.

9 THE VIDEOGRAPHER: The time is 5:08
10 p.m. We're going off the record.

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